

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 6

REMARKS

The last Office Action in the above-identified application and the references cited by the Examiner have been carefully considered. The claims have been amended in a sincere effort to define more clearly and more specifically features of Applicant's invention which distinguish over the art of record.

Initially, Applicant respectfully requests a one-month extension of time to respond to the Office Action. A check in the amount of \$60.00 is enclosed herewith; however, please charge any deficiency or credit any overpayment for the extension fee to Deposit Account No. 502335.

Applicant acknowledges and gratefully appreciates the Examiner's comments concerning the arguments he made in response to the previous Office Action. The following remarks address the Examiner's comments and the rejection of the claims in view of the prior art cited and on formal grounds.

More specifically, Claim 60 has been rejected under 35 U.S.C. §112 as failing to comply with the written description requirement. The Examiner contends that the claim contains subject matter which was not described in the specification. Claim 60 recites an activity level switch that when activated changes the activity level without the need to load new data. The Examiner contends, however, that activating the switch enters or loads new data because it enters data into the system that the current activity level has changed or is at a certain level.

Applicant wishes to point out that, perhaps, the Examiner misunderstood what the Applicant had intended by the amendment to Claim 60. Applicant's activity level switch 138, shown in Figure 15L of the drawings, is a manual switch which the worker can press to adjust the activity level until the desired activity level is displayed on the alphanumeric display panel 142. A change in the activity level preferably causes changes in the pan fill level for each of the products independently. For example, when changing from activity level 1 to activity level 2, the number of chicken sandwiches can be increased from six (6) to ten (10) whereas the number of burgers can remain at ten (10). Such is disclosed on page 25, lines 4-18 of the specification.

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 7

By the amendment made previously to Claim 60, Applicant is trying to clarify for the Examiner the differences between that which is disclosed in the Savage patent and the claimed invention. Not only does Applicant respectfully maintain that the Savage patent does not disclose an activity level switch, but also the Savage patent states that to change activity levels, the data must be updated. No such loading of new data is necessary for changing the activity level with Applicant's claimed invention.

Nevertheless, since the Examiner rejected Claim 60 having such language under formal grounds, Claim 60 has now been amended to delete such language in order to obviate this rejection. It is, therefore, respectfully urged that Claim 60 is now in proper form in compliance with 35 U.S.C. §112.

Claim 60 has been rejected as being unpatentable under 35 U.S.C. §103 in view of the combination of the Savage patent (U.S. Patent No. 6,026,372) and the Walker, et al. patent (U.S. Patent No. 6,298,331). The Examiner contends that the Savage patent, in view of the Walker, et al. patent, shows an activity level switch which comprises the logical switch within the computer, the current activity level changing in response to the automated activation of the switch, for instance as time switches from 11:15 to 11:30.

Applicant respectfully submits that he has carefully reviewed the Savage patent and the Walker, et al. patent, and neither shows any switch referred to in the last Office Action which could even remotely be considered an activity level switch. It seems that this "logical switch" within the computer is undefined and, certainly, has not been identified in the previous Office Action with respect to the rejection of Claim 60. Nevertheless, to again ensure that there is no confusion and to clarify and distinguish Applicant's invention defined by Claim 60 from some "logical switch within the computer" whereby there is an "automated activation of the switch", as contended in the Office Action as being found in the Savage patent in view of the Walker, et al. patent, Applicant has amended Claim 60 to define the product status system as including a "manual" activity level switch. This is in keeping with, and is supported by, the specification at the passage described previously (at page 25, line 4 – line 18, where it states that the worker can

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 8

manually adjust the activity level by depressing the activity level switch 138 until the desired activity level is displayed on the alphanumeric display panel 142). No such similar structure is found in or suggested by the Savage patent and the Walker, et al. patent, taken alone or in combination. Accordingly, it is respectfully urged that Claim 60 patentably distinguishes over the references of record and is allowable.

With respect to Claim 61, the Examiner acknowledges that the claimed invention changes the activity level without the loading of new data. Nevertheless, the Examiner has rejected Claim 61 on the basis of the combination of the Savage patent and the Walker, et al. patent. The Examiner contends that the combination of these two references discloses changing the activity level in response to time of day or events, and refers to Figure 4 of the Savage patent for showing this. However, Claim 61 is limited in that the current activity level is changed without the need to load new data. Such is not disclosed in the Savage patent, in combination with the Walker, et al. patent, as mentioned previously. The Savage patent states that to change activity levels, the data must be updated. The Walker, et al. method and apparatus are directed to discounting food when the food product is about to be discarded, and has nothing to do with an activity level as defined by Claim 61. There is no disclosure in the Walker, et al. patent of an activity level, which is defined as a rate of sale of the prepared food product. There is also no disclosure in the Walker, et al. patent of an activity level changing in response to at least one of a time, a day and an event and without the need to load new data, as defined by Claim 61. Accordingly, it is respectfully urged that Claim 61 patentably distinguishes over the Savage and Walker, et al. patents and is allowable.

The rejection of Claims 51-53, 56-57 and 63-65 under 35 U.S.C. §103(a) as being unpatentable over the Savage patent (U.S. Patent No. 6,026,372) in view of the Walker, et al. patent (U.S. Patent No. 6,298,331) has been maintained. Again, the Examiner's helpful comments concerning the arguments Applicant submitted in the last reply have been carefully considered.

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 9

Applicant wishes to address the rejection of Claim 58 at this present time. The Examiner stated on page 6 of the Office Action that, “it is noted that the activity level is claimed as ‘corresponding’ to a rate of sale, not that it is the rate of sale.” It is believed that the Examiner made this comment because he contends that the Savage patent shows an activity level represented by a total quantity desired per time period.

First, Applicant wishes to point out that Claim 58 has now been amended to definitively state that the activity level is a rate of sale of the prepared food product, the Applicant being cognizant of the Examiner’s kind comments. Similarly, Claim 58 has been amended to more definitively point out that the pan fill level is the quantity of the prepared food product to cook. The phrase “corresponding to” has been deleted from Claim 58.

Second, Applicant has carefully reviewed the Savage patent, and he cannot find any disclosure in the patent where the quantity of food product sold is referenced to a particular time period. It is respectfully urged that the Savage computer system monitors the quantity of food product sold, and just the quantity, and not the “rate of sale”, as specifically defined by amended Claim 58. Again, with respect to the Walker, et al. patent, it is respectfully urged that the Walker, et al. patent does not disclose an activity level, as mentioned previously. Accordingly, it is respectfully urged that Claim 58 patentably distinguishes over the Savage patent and the Walker, et al. patent, alone or in combination, and is allowable.

Claims 59-62 depend directly from amended Claim 58 and, accordingly, are respectfully urged to patentably distinguish over the references of record for the same reasons submitted with respect Claim 58.

Applicant now wishes to address the rejection of Claim 52 as being unpatentable under 35 U.S.C. § 103(a) over the combination of the Savage patent and the Walker, et al. patent. Applicant wishes to point out that this claim is narrow in several respects in that its depends from Claim 51 and requires the food product status indicator that is capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and a storage time exceeding an acceptable hold time, as defined by Claim 51, and is further

capable of showing a fourth state, as defined by Claim 52. That fourth state indicates that the cooking of a replenishment food product should commence. Claim 52 thus requires four states being shown by the food product status indicator, the first state being where the prepared food product is supplied to the storage location and the food product status switch is selectively operated by a user, the second state being where the storage location no longer contains prepared food product and the food product status switch is selectively operated by the user, the third state being where the storage time exceeds an acceptable food product hold time, and the fourth state indicating that the cooking of a replenishment food product should commence. These four states, together, are not found in the Savage patent and the Walker, et al. patent, taken alone or in combination.

Furthermore, Claim 52 states that the processing circuit compares the storage with a cook start time, the cook start time being equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product, and that the state of the food product status indicator associated with the storage location is changed to the fourth state in response to the storage time exceeding the cook start time. Such is not disclosed in the Savage patent or the Walker, et al. patent. The Savage patent does not disclose anywhere in the patent a food product status indicator associated with the storage location coupled to a processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, or capable of showing a fourth state. In fact, the Savage patent does not even mention holding food or food timers, or food to discard because of expired hold time. The Savage patent just monitors the number of food items sold based on signals from the cash registers, and instructs the cook to cook more. No hold times to determine the quality of the food already cooked are entered into the system. Nor is there a disclosure in any of the cited references, as the Examiner acknowledges, of a food product status indicator that indicates that the cooking of a replenishment should commence, wherein the processing circuit compares the storage time with a cook start time, the cook start time being equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product, as defined by Claim 52. The Examiner just states that such would be obvious, but refers to no

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 11

reference teaching or suggesting such. It is, therefore, respectfully urged that the product status system defined by Claim 52, the four states defined thereby and the processing circuit comparing the storage time with a cook start time, whereby the cook start time is equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product, are not found in any of the references cited by the Examiner nor can these be found in the general state of the art. Accordingly, it is respectfully urged that Claim 52 patentably distinguishes over the references of record and is allowable.

With respect to the rejection of Claim 51, Applicant respectfully urges that the Walker, et al. patent does not disclose a food product status switch associated with a storage location and a food product status indicator associated with the storage location, where the food product status indicator may be in one of three different states. Those three states would include a first state which indicates that the prepared food product is stored at the associated storage location, a second state which would indicate that the prepared food is not stored at the associated storage location, and a third state which indicates that the storage time exceeds an acceptable food product hold time. Nowhere in the Walker, et al. patent is a food product status indicator disclosed which is changeable into three states (or for that matter, a fourth state, as defined by Claim 52).

The Savage computer system does not hold products or use product hold times, as specifically defined by Claim 51. The Savage patent does not disclose, anywhere in the patent, a food product status indicator associated with the storage location coupled to a processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and a storage time exceeding an acceptable food hold time. The Savage patent does not even mention holding food or food timers, or food to discard because of expired hold times. The system disclosed in the Savage patent just monitors the number of food items sold based on signals from the cash registers, and instructs the cook to cook more. No hold times to determine the quality of the food already cooked are entered into the system.

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 12

Accordingly, it is respectfully urged that Claim 51 patentably distinguishes over the Savage patent and the Walker, et al. patent, alone or in combination, and is allowable. It would be quite helpful to the Applicant if the Examiner would be kind enough to point to where in the Savage patent and the Walker, et al. patent each item defined by Claim 51 is found. This would certainly expedite the prosecution of this application, and will aid the Applicant in his understanding of the Examiner's rejection of the claims based on the Savage and Walker, et al. patents.

Claims 52-56 and 63-65 depend directly or indirectly on Claim 51 and, therefore, are respectfully urged to patentably distinguish over the references of record for the same reasons submitted with respect to Claim 51.

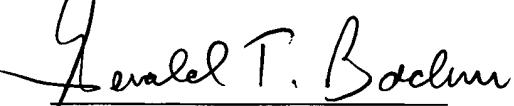
The rejection of Claims 54 and 55 as being unpatentable over the Savage patent, the Walker, et al. patent and the Koether patent (U.S. Patent No. 5,875,430) has also been maintained. The Koether patent has been carefully considered, but it is respectfully urged not to disclose a food product status indicator which has a seventh state which indicates that the storage location is not being used, nor does it disclose that the state of the food product status indicator changes to the seventh state in response to activation of the active switch. As such, Claims 54 and 55, which have been previously urged to be patentably distinguishable over the references of record for the same reasons submitted with respect to Claim 51 from which they depend, are also urged to patentably distinguish over the Savage patent, the Walker et al. patent and the Koether patent, alone or in combination, as these patents do not teach or suggest the features set forth in Claims 54 and 55.

In view of the foregoing amendments and remarks, entry and favorable consideration of the amendments to Claims 58 and 60, favorable reconsideration of unamended Claims 51-57, 59 and 61-65, and allowance of the application with Claims 51-65 are respectfully solicited. If the Examiner has any comments or suggestions which would expedite the prosecution of this

Applicants: Mark Salerno
Serial No: 09/692,578
Filed: October 19, 2000
Our Docket: 948-5 RCE
Page 13

application to a favorable conclusion, such would be appreciated by the Applicant, and the Examiner may contact the undersigned attorney at the telephone given below in this regard.

Respectfully submitted,



Gerald T. Bodner
Attorney for Applicant
Registration No. 30,449

BODNER & O'ROURKE, LLP
425 Broadhollow Road, Suite 108
Melville, New York 11747
Telephone: (631) 249-7500
Facsimile: (631) 249-4508